

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION**

CRAIG FLOWERS,

Plaintiff,

v.

DR. AYERS, and CHRISTINE CROSS,

Defendants.

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CASE NO.: 1:13-CV-186 (WLS)

ORDER

Before the Court is a Recommendation from United States Magistrate Judge Thomas Q. Langstaff in this deliberate indifference case brought pursuant to 42 U.S.C. § 1983. (Doc. 16.) In the Recommendation, Judge Langstaff recommends that the Court grant Defendants' Motion to Dismiss (Doc. 12) due to Plaintiff's failure to exhaust administrative remedies. (Doc. 16 at 4-5.) Plaintiff did not respond to the Motion to Dismiss and has not filed an objection. (*See generally* Docket.) The time to do so has elapsed.

In his Complaint, Plaintiff admitted that he did not file a grievance, but stated that the reason therefor was that one of his previous grievances had been denied by Defendant Cross. (Doc. 1 at 4.) An affidavit filed by Christine Cross, Deputy Warden of Care and Treatment at Calhoun State Prison, confirms that Plaintiff did not file a grievance relevant to this suit. (Doc. 12-2.) Because futility is not an excuse for failure to exhaust administrative remedies, the Court agrees that Plaintiff's Complaint should be dismissed for that reason.

Upon full review and consideration of the record, the Court finds that Judge Langstaff's Recommendation (Doc. 16) should be, and hereby is, **ACCEPTED, ADOPTED** and made the Order of this Court for reason of the findings made and reasons stated therein, together with the reasons stated and conclusions reached herein.

Thus, Defendants' Motion to Dismiss (Doc. 12) is **GRANTED**. Plaintiff's Complaint (Doc. 1) is **DISMISSED WITHOUT PREJUDICE**.

SO ORDERED, this 16th day of May 2014.

/s/ W. Louis Sands

W. LOUIS SANDS, JUDGE
UNITED STATES DISTRICT COURT